

76-1084

OGC HAS REVIEWED.

MEMORANDUM FOR: Deputy Director for Administration

FROM:

Office of General Counsel

25X1A

SUBJECT:

OGC Concurrence in Waiver of Provision of
Travel on American Airlines for
Employees Prior to June 1975

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REFERENCES:

A. Memo for DDA fm D/OEL, Subj: Exception
to [REDACTED], dtd 26 Mar 76

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B. Memo for DDA fm D/Finance, Same Subj,
dtd 27 Apr 76

1. Reference B requests the concurrence of this Office in the proposal to retroactively waive the provisions [REDACTED] in the case of employees [REDACTED] who used foreign airlines for R&R travel prior to 17 June 1975. [REDACTED] requires Agency employees to use American airlines, unless unavailable, for official travel abroad. While not based on a specific statutory requirement, this regulation conforms to the sense of the Congress as expressed in Senate Concurrent Resolution 53, 87th Congress, 76 Stat. 1428, and is similar to regulations contained in the Foreign Travel Regulations.

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2. Subparagraph f of [REDACTED] provides that:

In the event of noncompliance with the above provisions, in connection with either direct or indirect travel, reimbursement to the employee for air fares will be limited to the sum of

(1) the published fares for those segments of the actual travel for which American airlines were used (but not more than the published fares for segments of the direct usually traveled route for which American airlines should be used under the above provisions) and

(2) the published fares for the foreign airlines segments necessary on the direct, usually traveled route; with the proviso that reimbursement may in no case exceed the actual fare for travel by the direct, usually traveled route. The employee will be required to pay any costs in excess of the above reimbursement limitation.... (Emphasis added.)

53a

REFERENCE

SECRET

35774

25X1A In the present case a number of [REDACTED] employees received payment for travel or segments of travel on foreign airlines contrary to Agency regulations and the wishes of the Congress as expressed in Senate Concurrent Resolution 53. In accordance with subparagraph f cited above, amounts received from the Agency in payment for the unauthorized travel were improper. The present question is whether these overpayments should be collected from the employees.

25X1A 3. Subject memorandum recommends that the provisions of [REDACTED] be retroactively waived by the DDA pursuant to his authority contained in
25X1A HR [REDACTED] It is our opinion that waiver of the regulations in this case,
25X1A particularly a retroactive waiver, would be inappropriate. HR [REDACTED] does not in itself create any authority to waive regulations but only states that any existing authority found in any statute or regulation permitting any unusual or emergency payment may be utilized in conjunction with Agency travel regulations.

25X1A 4. The DDA authority to waive regulations is contained in HR [REDACTED] and states:

...When appropriate justification is submitted to the Deputy Director for Administration, and if he determines that the best interests of the Government are so served, the Deputy Director for Administration may approve exceptions to those normal administrative regulations that are not based upon statutory requirements or that do not require the approval of the Director. (Emphasis added.)

While this Office sympathizes with the plight of the employees in question, a waiver by the DDA in the present circumstances would, in effect, legitimize payments made contrary to Agency regulations and for which there was no legal foundation. The circumstances favoring such a waiver (i.e., the fact that the unauthorized transportation was tacitly or officially approved, in error, by the local Agency officials and that the expense to the U.S. did not exceed the cost of the normal travel entitlement on conforming U.S. airlines) do not, in our view, justify what we consider to be unwise precedent, the retroactive waiving of an Agency regulation.

5. Further, to waive the regulation in question would, in our opinion, conflict with the statutory duty imposed on the DCI in 31 U.S.C. 952. This

section provides:

(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency. (Emphasis added.)

25X1A The pertinent Agency regulation, HR [REDACTED] requires conformity with "administrative action normal for the U.S. Government" except in cases involving operational or security considerations unique to the Agency.

6. The standards promulgated by the Attorney General and the Comptroller General may be found in 4 FAM 488. Included within the regulations are procedures to be observed in the compromise, suspension or termination of claims. Such provisions may be applicable to the present cases of unauthorized foreign travel and should be examined. Copies of the cited FAM sections are attached for your convenience.

[REDACTED]

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Att.
A/S